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Honorable Fred P. Corbit
Chapter 9

12 UNITED STATES BANKRUPTCY COURT
13 EASTERN DISTRICT OF WASHINGTON

14 In re

15 KENNEWICK PUBLIC HOSPITAL
16 DISTRICT,

17 Debtor.

Case No. 17-02025-FPC9

REQUEST OF KEYBANK, N.A. FOR
ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE RENT CLAIM

18 **I. Request**

19 Pursuant to Section II.Q (p. 39) of this Court's Order Confirming Fourth
20 Amended Plan of Adjustment Dated June 19, 2018 (Dkt. #985; the "Confirmation
21 Order"), Keene Plaza, LLC ("Keene Plaza"), by its sole member KeyBank
22 National Association, as Trustee ("KeyBank"), requests that the Debtor pay (or
23 that this Court enter an order allowing) Keene's claim for postpetition-pre-
24 rejection lease charges as an administrative priority claim in the amount of
25 \$12,516.98 in accordance with the terms of the Plan (or the Court's order).
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REQUEST OF KEYBANK, N.A. FOR ALLOWANCE AND
PAYMENT OF ADMINISTRATIVE RENT CLAIM - 1

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1 This Request is based on the files and records herein; on the Declaration of
2 Debra S. Thomas filed herewith; and on the subjoined Memorandum.

3 DATED this 25th day of June, 2018.

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5 MILLER NASH GRAHAM & DUNN LLP

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11 **II. Memorandum**

12 **A. Background**

13 KeyBank National Association, as Trustee, is the sole member of Keene
14 Plaza. In 2016, Keene Plaza purchased the building commonly known as 81-103
15 Keene Road, Richland, WA 99352 (the "Premises"). As purchaser, Keene Plaza
16 succeeded to the interests of Regional Properties of Washington, LLC and Bloch
17 Keene LLC as prior owners and lessors of the Premises under that certain lease of
18 nonresidential real property dated October 31, 2007 and originally executed by and
19 between Regional Properties of Washington, LLC and the Debtor/Trios Health (the
20 "Lease"). A copy of the Lease, with a clarifying Tenant Estoppel document, is
21 attached as Exhibit A to the Thomas Declaration.

22 The Lease was rejected by the Court's October 5, 2017 Order Authorizing
23 Debtor's Rejection of Certain Executory Contracts Pursuant to 11 U.S.C. §365(a)
24 (Dkt. #286) (the "Rejection Date"). The Lease (Section 5.1) requires that rent be
25 paid "on or before the first calendar day of each month." The Debtor failed to pay
26 rent, as required by the Lease (as amended), from August 1, 2017 through the

1 Rejection Date. Amounts owing under the Lease for that period are \$12,516.98,
2 calculated as follows:

3	Base rent of \$3,097.50 for three months (August-October)	\$9,292.50
4	CAM charges of \$473.09 for one month (August)	\$473.09
5	CAM charges of \$545.43 for two months (September, October)	\$1,636.29
	Late fees of \$371.70 for three months (August-October)	\$1,115.10
	Total	\$12,516.98

6 See, Thomas Declaration filed herewith.

7 **B. Legal Argument**

8 It is fundamental that Bankruptcy Code §365(d)(3) requires a debtor to
9 “timely perform all the obligations of the debtor...arising from and after the order
10 for relief under any unexpired lease of nonresidential real property until such lease
11 is assumed or rejected, notwithstanding section 503(b)(1) of this title.” Consistent
12 with this statutory requirement and Keene Plaza’s claim, case law confirms that: a)
13 §365(d)(3) confers “priority payment status to the full amount of rent due under
14 nonresidential leases”; and b) Congress intended “to secure for lessors the full
15 amount of rent due...while the trustee determines to accept or reject the lease,
16 regardless of any benefit to the estate.” *In re Pacific-Atlantic Trading Co.*, 27 F.3d
17 401, 404, 405 (9th Cir. 1994). In addition, Keene Plaza is entitled to a priority
18 claim for all October rent, despite the fact that the Rejection Date was October 5.
19 See, e.g., *In re Leather Factory, Inc.*, 475 B.R. 710, 713 (Bankr. C.D. Cal. 2012)
20 (“the statute is clear and the control of the date of rejection is in the hands of the
21 trustee, not of the landlord”), citing *HA-LO Industries v. Centerpoint Properties*
22 *Trust*, 342 F.3d 794 (7th Cir. 2003) (debtor required to pay rent for entire month of
23 November, where rent was due on November 1 and the lease rejection occurred on
24 November 2).

1 C. Conclusion

2 The Debtor has failed to pay postpetition rent under the Lease from August 1
3 to the Rejection Date. Keene Plaza is entitled to be paid \$12,516.98 in rent for that
4 period.

5 DATED this 25th day of June, 2018.

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2 Certificate of Service

3 I hereby certify that on this day, I caused the foregoing to be electronically
4 filed with the Clerk of the Court using the CM/ECF System which in turn
5 automatically generated a Notice of Electronic Filing (NEF) to all parties in the
6 case who are registered users of the CM/ECF System. The NEF for the foregoing
7 specifically identifies recipients of electronic notice.
8

9 DATED this 25th day of June, 2018.

10 /s/ Dona D. Purdy
11 Legal Assistant
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